

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

**NEW YORK STATE RESTAURANT
ASSOCIATION,**

Plaintiff,

- against -

**NEW YORK CITY BOARD OF HEALTH,
NEW YORK CITY DEPARTMENT OF HEALTH
AND MENTAL HYGIENE, and Thomas R. Frieden,
In His Official Capacity as Commissioner
of the New York State Department of Health
and Mental Hygiene,**

Defendants.

No. 2007 Civ. _____

**DECLARATION OF
DEBRA DEMUTH**

DEBRA DEMUTH hereby declares under penalty of perjury:

1. I am the Global Director of Nutrition of McDonald's Corporation. After I earned a doctorate in nutrition from Florida State University, I served on the faculty of Emory University School of Medicine and, since leaving academia, have worked as a nutritionist for a number of companies in the food and beverage industry.

2. McDonald's is the largest restaurant company in the world. It feeds more than 50 million people a day in more than 130 countries. We provide convenient, wholesome, safe, and affordable food to millions of people each day. We have taken our responsibility to provide nutrition information to our customers seriously – and have taken a comprehensive approach in providing this information.

3. For reasons stated below, we believe that New York City's new Regulation 81.50 compromises the meaningfulness and relevance of nutrition information to our consumers by

focusing just on calories. For the benefit of the long-term health objectives of consumers, it's more than just calories, it's also the nutrients that count. In addition, a comprehensive approach to a healthy lifestyle is needed – and not just a healthy diet. Further, implementing an environmental nutrition intervention at point of purchase (Regulation 81.50) that has not been carefully evaluated through research poses risks to the consumer and does not reflect sound public health practices.

McDonald's Comprehensive Approach to Nutrition and Health Issues

4. McDonald's has taken a comprehensive approach to nutrition and health issues based on three simple concepts—choice, information, and balance. We have termed this approach “Balanced, Active Lifestyles.” We have increased the variety of our menu choices; provided nutrition composition of our foods in 5 different ways to the consumer; and have taken a leadership role in promoting physical activity through a variety of programs. Information about McDonald's “Balanced, Active Lifestyles” can be found on McDonald's website (Ex. A hereto) as well in documents published in recent years, such as McDonald's Initiative to Support Balanced, Active Lifestyle (Ex. B hereto) and McDonald's 2006 Worldwide Corporate Responsibility Report (Ex. C hereto).

5. McDonald's developed the Balanced, Active Lifestyles framework under the guidance of McDonald's Global Advisory Council on Balanced Active Lifestyles, a council of thirteen independent nutrition, health and fitness experts, and the European Nutrition Task Force, a group of independent nutrition professionals focusing on Europe.

6. The first component of the Balanced, Active Lifestyle framework is menu choice. McDonald's seeks to accommodate customers' varied energy and nutrition needs by expanding our menu offerings to include entrée-sized salads with low-fat dressings and portion control

through providing a range of serving sizes at point of purchase. McDonald's provides other menu options such as grilled chicken sandwiches, fruit and yogurt desserts, soups and fresh fruit side options. For children, parents have choices of sandwiches, side dishes, and beverages, including low-fat milk and 100% fruit juice. In addition to our menu choices, McDonald's offers customers the opportunity to customize their selections through the inclusion or deletion of menu item components such as mayonnaise, margarine, low-fat dressings and sauces.

7. The second component of the Balanced, Active Lifestyle framework is information: specifically, the nutritional composition (including 14 nutrients) of our foods. McDonald's has provided the nutritional composition of our menu items to consumers for thirty years. As described below, we provide nutrition information to our customers through many vehicles in multiple access points, and we are proud of the innovations we have made and the accuracy and transparency of our communications.

8. The third component of the Balanced, Active Lifestyle framework is balance: balancing energy intake with energy expenditure through increasing physical activity. Physical activity is a critical component in maintaining appropriate energy balance and having a healthy lifestyle. McDonald's recognizes this need and sponsors many programs to motivate customers to be more physically active. In 2004, for example, McDonald's expanded the "Step With It!" program to encourage middle-school children and their families to incorporate physical fitness into their lives by increasing their daily walking. McDonald's promoted an adult version of the Happy Meal, "Go Active! Happy Meal," which contained a Stepometer to log the number of steps taken and Step with It! booklet developed by a well-known exercise physiologist, Bob Green. McDonald's supports several initiatives to encourage children to be physically active, such as the "Get Moving with Ronald McDonald," a show seen by over 1 million children in the

U.S. since 2003. McDonald's funds local and world-wide community sports programs, including the Olympic Games.

McDonald's Approach to Providing Nutritional Information

9. McDonald's provides nutrition information to consumers in a variety of ways. First, McDonald's makes nutrition information available to consumers in the restaurant through its nutrition facts brochure. The brochure provides a comprehensive list of the nutritional composition (including 14 nutrients) of our standard menu items. It discloses, for each menu item: serving size, calories, calories from fat, total fat, saturated fat, trans fat, sodium, carbohydrates, dietary fiber, sugars, protein. It also discloses the percentage of recommended daily values for a 2000 calorie diet of total fat, saturated fat, cholesterol, sodium, carbohydrates, dietary fiber, and vitamins A and C, calcium, and iron. A copy of the current brochure is attached as Exhibit D. Inclusion of a comprehensive list of nutrients in addition to calories including total fat, saturated fat, trans fat, and sodium better enables customers to make their selections based on long-term health objectives, such as cardiovascular health, as opposed to just calories.

10. Second, McDonald's offers a comprehensive and interactive nutrition section on its website. The website publishes our nutrition facts brochure and lists the ingredients of each component of a menu item. It publishes the food exchange values of each menu item, as defined by the American Diabetes Association, for customers who have diabetes or who use the food exchange system for weight control. For customers with food allergies, the website lists food allergens in each menu item. The website is interactive. A customer can customize any menu item, with the website calculating the calories, fat, saturated fat, cholesterol, sodium, carbohydrates, dietary fiber, and protein in the customized menu item. A customer can build a

meal, with the website calculating this information (including percentages of daily values as noted above) for the entire meal. The website also includes information on physical activity and balanced diet choices, and a frequently asked questions section that provides details on our philosophy and recommendations for maintaining a balanced active lifestyle.

11. Third, McDonald's provides trayliners featuring nutrition information for its menu items, as well as quick tips for using that information in order to achieve a balanced, active lifestyle. Like the brochures, the trayliners provide comprehensive information about the nutritional composition of our menu items.

12. Fourth, nutrition information is available to customers through a toll-free telephone number. Customer service representatives are trained to answer customers' questions and to provide nutrition information about our menu items. Like the written materials, the customer service representatives can provide a customer with any or all of the information about the nutritional contents of the menu items.

13. Fifth, McDonald's prints nutrition information directly on much of our food packaging. McDonald's was the first major restaurant company to offer information in this format. McDonald's presents the food's nutrition content for five elements: calories, protein, fat, carbohydrates and sodium on the wrapper or package in the FDA formatted Nutrition Facts Panel as well as in a graphic icon. To provide consumers with the ability to anchor the information to their daily needs, each element's nutrition value is presented numerically and graphically as a percentage of the recommended daily value for a 2000 calorie diet in an icon-based format, easily understood independent of language.

Disagreement with Regulation 81.50.

14. We strongly disagree with New York City's proposed requirement that McDonald's isolate and post caloric information alone next to menu items on our menu board. The proposal undercuts McDonald's comprehensive approach to educating consumers about health and nutrition. We believe that our approach is based on the public health community's consensus for communicating nutrition and health information to consumers to enable them to make the right choices for their long-term health objectives and we believe that the City's approach is unsound. Consumers need more guidance than just "calories." Simply put, we strongly disagree with the message that the City of New York demands that we convey, for the following reasons.

15. *First*, by requiring McDonald's to overemphasize the importance of calories, the City's regulation will undermine McDonald's carefully developed approach to communicating with our customers about nutrition and health. We believe that caloric information is only one part of health and good nutrition and that consumers should focus on more complete nutrition information. In forcing McDonald's to disassociate caloric information from more comprehensive health and nutrition information, the City undermines McDonald's ability to explain the presence or absence of a variety of other important nutrients and factors that are equally important in promoting consumer health and wellness. For example, the highly regulated definition of a "healthy" meal by the FDA focuses on restricting fat, cholesterol, and sodium in addition to requiring the presence of 3 of 6 nutrients (protein, fiber, vitamins A and C, iron and calcium). Similarly, the 2005 Dietary Guidelines, published jointly by the U.S. Department of Health and Human Services and the Department of Agriculture, emphasize the importance of including nutrient dense foods and moderating saturated fat, trans fat, cholesterol and sodium.

16. For nutrition information to motivate and be meaningful to consumers, it must be provided within the broader context of helping consumers achieve a healthy diet and lifestyle. The 2005 Dietary Guidelines identify nine core areas that relate to diet and health, and caloric intake is only one part of one such area. The nine areas are: adequate nutrients within caloric needs, weight management, physical activity, food groups to encourage, fats, carbohydrates, sodium and potassium, alcoholic beverages, and food safety. Thus, the 2005 Dietary Guidelines do not overfocus on or myopically isolate calories. Rather, they recommend that individuals consume a variety of nutrient-dense foods and beverages within and among the basic food groups; that they balance calories from foods and beverages with calories expended; that they engage in regular physical activity and reduce sedentary activities; that they consume a variety of fruits, vegetables, whole-grains, and milk products each day; and that they limit intake of fats and oils high in saturated or trans fatty acids. By highlighting the calories of the food product alone and in isolation, Regulation 81.50 will require McDonald's to contradict its carefully developed approach to nutrition and health, which includes menu choice, nutritional information in context, and physical activity.

17. *Second*, we believe that the information will be meaningless to most consumers, who need an "anchor" to understand nutrition information. Most consumers do not know the recommended daily allowances for various nutrients, or their recommended daily caloric intake. McDonald's helps consumers put nutritional information in context with an "anchor," in the form of a graphical icon-based bar-graph on its food wrappers. The graph shows consumers not only the nominal amount of various nutrients (calories, protein, fats, carbohydrates and sodium), but the amount of the recommended Daily Value for a 2000 calorie diet. Without seeing nutritional information in context, unadorned caloric value is a confusing and meaningless

number to many consumers, and could lead individual consumers to make the wrong choices for their long-term health goals. Regulation 81.50, however, demands that restaurants give caloric information out of context, without such an anchor.

18. *Third*, we believe that the regulation's focus on calories alone is the wrong approach to addressing increasing rates of obesity. We are of the view that no single factor is responsible for the increasing rates of obesity. Rather, we believe that the causes are complex and fueled by many factors, including genetics, cultural issues, economic factors, excess food consumption and today's increasingly sedentary lifestyles. We believe that the key to maintaining a healthy weight is striking the right balance between calorie intake and physical activity. By focusing on calories alone, we think that the City is looking for an ineffectual "magic bullet" that may mislead consumers.

19. *Fourth*, we do not believe that the City's focus on calories on the menu board is scientifically sound in that it is not based on findings from scientific research. In my opinion, the scientific basis for evaluating the effect of communicating nutrition information at the point of purchase is at a very early stage. That opinion is shared by others. The Keystone Forum's final report (May 2006), concluded that there is no public health consensus on how consumers use nutrition information, and that:

There is a clear need for more research regarding how the provision of nutrition information, claims (such as "low calorie"), and symbols influence consumer preference and choice for away-from-home food consumption situations. Of particular concern is how, when, and why consumers use nutrition information and claims during their decision-making processes. More specifically, a better understanding is needed of the types of factors that moderate consumers' responses to the provision of nutrition information and claims for away-from-home foods.

The chapter concludes with a list of suggested research questions for addressing these topics.

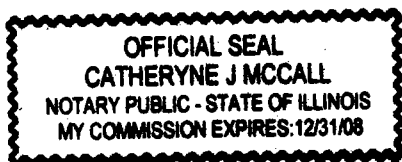
20. Similarly, in a recent review published in *Preventative Medicine*, researchers evaluated all research articles they could find that influenced the environment through food availability, access, pricing or information at the point-of-purchase in various settings. Due to the small number of interventions that were of suitable quality and design to include in the review, the authors concluded: "Research is needed using consistent methods, better assessment tools, and longer durations; targeting diverse populations; and examining sustainability." Seymour, et al., "Impact of Nutrition Environmental Interventions On Point-Of-Purchase Behavior In Adults: A Review," 39 Preventive Medicine S108 (2004).


21. In sum, we strongly disagree with the New York City proposal. We think it overemphasizes the importance of calories and undermines the program we have developed in addition to the public health initiatives based on the Dietary Guidelines provided by the USDA. We think it will provide information in a way that will be meaningless and possibly misleading for many of our customers. We think it will not be effective in addressing the causes of obesity and the resultant public health concerns. We think scientific consensus should lead public policy and regulations. And the scientific basis for this regulation is unsubstantiated.

22. I declare under penalty of perjury that the foregoing is true and correct.

Executed on June 13, 2007


Debra DeMuth




6/13/07